



January 13, 2000

Mr. Leonard W. Peck, Jr.
Assistant General Counsel
Texas Department of Criminal Justice
P.O. Box 4004
Huntsville, Texas 77342-4004

OR2000-0140

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 131072.

The Texas Department of Criminal Justice (the "department") received a request for all information related to the requestor who is a correctional officer with the department. You indicate that the requestor's statement has been made available to her. You claim that the remaining information is excepted from disclosure under sections 552.101, 552.107, 552.108, and 552.131 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

The Public Information Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten business days after the governmental body's receipt of the request for information. Gov't Code § 552.301(e). The time limitations found in section 552.301 are express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. *See* Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. *See, e.g.*, Open Records Decision No. 150 (1977) (presumption of openness overcome by showing that the information is made confidential by another source of law or affects third party interests).

The department provided this office with a statement indicating that the request for public information was received by the department on October 18, 1999. You did not seek a

decision from this office until November 5, 1999. Consequently, you have not met your statutory burden. Gov't Code § 552.301. The requested information is therefore presumed public. However, you assert, inter alia, that the requested information is excepted from required disclosure pursuant to section 552.131 of the Government Code. The application of section 552.131 of the Government Code to the submitted information provides a compelling reason which will overcome the presumption that the information is subject to required disclosure. Therefore, we will address your arguments under this exception.

Section 552.131 of the Government Code excepts from disclosure information obtained or maintained by the department which relates to an inmate who is confined in a facility operated by or under contract with the department. We note, however, that basic information regarding an incident involving the use of force must be released in accordance with section 552.029(a)(8) of the Government Code. This office has determined that basic information includes the time and place of the incident, names of inmates and department officials directly involved in the incident, a brief narrative of the incident, a brief description of any injuries sustained, and information regarding criminal charges or disciplinary actions filed as a result of the incident. Therefore, except as noted above, the department must withhold the requested information from disclosure under section 552.131. As section 552.131 is dispositive, we do not address the additional exceptions to disclosure you assert.¹

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

¹This ruling is limited to the application of sections 552.029 and 552.131. This ruling does not consider the applicability and effect of the Final Judgment in the case of *Ruiz v. Collins*, No. H-78-987 (S.D. Tex., filed Dec. 11, 1992), to the information at issue. However, we note that *Ruiz* is still in effect and it prohibits the release of certain "sensitive information," which may include information required to be released under section 552.029. We remind you that section 552.107(2) of the Government Code requires you to withhold information that is made confidential by court order, and that section 552.352 prescribes criminal penalties for the disclosure of confidential information.

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.-Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Carla Gay Dickson
Assistant Attorney General
Open Records Division

CGD/ch

Ref: ID# 131072

Encl. Submitted documents

cc: Ms. Nancy Rodriguez
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(w/o enclosures)